
(2012) 05 NCDRC CK 0105

In the National Consumer Disputes Redressal Commission

Suresh Bhatia

APPELLANT

Vs

Parmila Sharma W/o Shri Subhash Chander S/o Narain Dutt
Sharma

RESPONDENT

Date of Decision : 15-05-2012

Acts Referred:

Citation : 2012 0 NCDRC 136 : 2012 3 CPJ 186 : 2012 3 CPR 35

Hon'ble Judges : V.B.Gupta , Vinay Kumar J.

Advocate : Mohinder Singh , Madhurendra Kumar

Judgement

1. IN all these revision petitions, facts are similar and common question of law is involved, hence, the same are being disposed of by this common order.

2. SURESH Bhatia Vs. Parmila Sharma & Ors., RP No.244 of 2012 shall be taken as the lead case. In these petitions, there is challenge to order dated 9.1.2012, passed by Haryana State Consumer Disputes Redressal Commission, Panchkula (for short as State Commission) vide which appeals of the petitioner were dismissed on limitation as well as merits, with costs of Rs.10,000/- each, to be deposited with Haryana Stage Legal Service Authority, Chandigarh.

Aggrieved by the impugned order, petitioner filed above petitions making following prayers : (a) set aside the impugned order dated 9.1.2012 passed by learned State Commission Haryana at Panchkula in First Appeal No.13 of 2012 as well as the order dated 20.7.2010 passed by the District Forum at Rohtak in complaint no.673 of 2008 : (b) set aside the judgment/order dated 7.9.2011 passed by the learned District Forum at Rohtak in Execution No.243 of 2010 : (c) cancel the arrest warrants issued against the petitioner and quash/set-aside the sentence of imprisonment for three years passed by the learned District Forum, Rohtak vide order dated 7.9.2011 in Execution No.243 of 2010 : (d) dismiss the complaint filed by the complainant."

3. RESPONDENT no.1/complainant filed complaint under Section 12 of the Consumer Protection Act, 1986 (for short Act) before District Consumer Disputes

Redressal Forum, Rohtak (for short as District Forum) alleging that complainants deposited certain amount with respondent no.2 Society, of which petitioner is the President. Petitioner as well as respondent no.2, did not pay the amount nor the interest on maturity, in spite of repeated request and demand made by the complainants. After notice, petitioner and respondent no.2 appeared before the District Forum but did not file any reply and as such they were proceeded ex-parte for non-appearance on 4.11.2009. Complainant led its evidence.

4. DISTRICT Forum, after going through the record and after hearing the parties who were present, came to the conclusion that complaints are tenable and petitioner and respondent no.2 are jointly and severally liable as per impugned order dated 20.7.2010. Accordingly, DISTRICT Forum passed the following directions : "Accordingly, we hereby allow the complaint with direction to the opposite parties no.1 & 2 to pay the amount of Rs.2,56,005/- (Rupees two lakhs fifty six thousand five only) of accounts Ex.P2 to Ex.P8 along with interest @ 9% p.a. from the date of maturity of alleged accounts till its realization and to pay the amount of Rs.2,000/- (Rupees two thousand only) as litigation expenses to the complainant maximum within one month from passing of this order failing which the amount of award shall carry interest @ 12% p.a. from dated 20.8.2010 onwards till its realization to the complainant." Aggrieved by order of District Forum, petitioner filed appeals before the State Commission, which dismissed all the appeals of the petitioner. Aggrieved by the impugned order, present revision petitions have been filed by the petitioner.

5. WE have heard learned counsel for the parties and have gone through the record.

6. AS per impugned order, petitioner earlier filed revision petitions against the order of District Forum. However, at the time of hearing, petitioner filed an application stating that against the final order passed in the complaint, revision petition is not maintainable. Therefore, his revision petitions may be converted into appeals. State Commission converted the revision petitions into appeals. Along with appeals, petitioner filed applications for condonation of delay in filing the earlier revision petition. However, in application, no period for which condonation of delay was sought had been mentioned. AS per impugned order, there was delay of 496 days in filing of the appeal. State Commission called for the record of District Forum and in its impugned order observed : "A bare perusal of the jiminy orders passed by the District Forum makes it clear that on 20.2.2009, appellant has put his appearance before the District Forum through his counsel Shri W.S. Narwal, Advocate and thereafter, he sought several adjournments for filing written statement. However, appellant has avoided to file the written statement and suddenly on 4.11.2009, appellant has stopped his appearance before the District Forum, which led to the initiation of ex-parte proceedings, followed by the ex-parte award on 20.7.2010." It further observed : "In view of the above facts, it cannot be termed that appellant was not aware about the proceedings before the District Forum, rather he had taken the false

stand in this regard before this Commission by suppressing the material facts in the appeal. It cannot be ignored that there is a delay of 496 days in filing the appeal, which cannot be condoned on the false grounds taken by the appellant in his application that he was not aware to the proceedings before the District Forum, whereas he was participating as is evident from the interim orders passed in the progress of the complaint by the Forum. Even after the expiry of limitation period, a valuable right has accrued in favour of the complainant and that rights of the complainant cannot be denied unless the sufficient grounds on the part of the appellant is proved." State Commission also observed : "Therefore, the ground stated in the application cannot constitute sufficient cause so as to condone the delay in filing the appeal as prayed for in the application from the side of the appellants. Therefore, the application for condonation of delay in filing the appeal is rejected."

On merits, State Commission held : "As far as the merits of the case is concerned, it is not disputed that after putting appearance before the District Forum and seeking several adjournments for filing written statement, he has not filed the same which led to the passing of ex-parte award against the appellant. By not contesting the complaint before the District Forum, appellant himself has shown his inability with respect to any kind of defence in his favour. The argument raised by the learned counsel for the appellant that he could not file the written statement for want of resolution of the society is not acceptable, because, appellant has been arrayed in the complaint in his personal capacity also. It appears that by filing the present appeal before this Commission, the appellant wants to gain the time to honour the award, which cannot be allowed, keeping in view the interest of the complainant. In fact, the appeal preferred by the appellant is not having any merit. Hence, we uphold the impugned order passed by the District Forum. Before parting the order, we express our opinion with respect to the false stand taken by the appellant in his application with respect to the unawareness of the proceedings before the District Forum, despite the fact appellant himself has represented his case and after some time he himself has absented from the proceedings of the Forum, showing his unwillingness to contest the complaint. The entire action on the part of the appellant is an abuse of the process of law based on the concealment of the facts and not coming to the Forum with clean hands. In such type of cases, the Hon ble National Commission in Revision Petition No.2660 of 2010, titled as "Haryana Urban Development Authority Vs. Baldev Narang" decided on 23rd November, 2010 by following the observations of the Hon ble Supreme Court in case titled "Bikaner Urban Development Trust Vs. Mohan Lal, reported in 2010 CTJ 121 (Supreme Court) (CP) has dismissed the petition of the petitioner with punitive cost of Rs.1 lakh. As a sequel to our above discussion, this appeal is dismissed on both the counts i.e. limitation as well as merits with the costs of Rs.10,000/- to be deposited by the appellant with the Haryana Stage Legal Service Authority, Chandigarh, within 30 days from today."

7. AFTER going through the record and perusing the reasoning given by the

State Commission, we find no reason to disagree with the findings of the State Commission. It rightly dismissed the appeals of the petitioner against order dated 20.7.2010, passed by District Forum in all the complaints. Ex-facie, present revision petitions are not maintainable under the law at all. Petitioner has filed present revision petitions under two different provisions of the Act : (i) Firstly, u/s 21 (b) of the Act and (ii) Secondly, u/s 27A of the Act.

8. BESIDES, challenging the impugned order dated 9.1.2012, passed by the State Commission, petitioner has also challenged order dated 7.9.2011 of the District Forum passed in the execution proceedings. Challenge to order dated 7.9.2011 in these petitions are barred by limitation. Further, no revision shall lie directly before this Commission against the order passed by the District Forum. For challenging order passed in the execution proceedings, only appeal will lie, as it is manifestly clear from the provisions of Section 27A of the Act, which reads as under : "27-A. Appeal against order passed under section 27 --- (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from -- (a) the order made by the District Forum to the State Commission : (b) the order made by the State Commission to the National Commission : and (c) the order made by the National Commission to the Supreme Court. (2) Except as aforesaid, no appeal shall lie to any court from any order of a District forum or a State Commission or the National Commission. (3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission. Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days."

Since, appeal lies against the impugned order, present revision petition filed u/s 27A of the Act is not maintainable, at all. Even on merits, the petitioner has no case. As per record, petitioner got himself ex-parte deliberately before the District Forum. Thus, a valuable right has accrued in favour of the complainants. There is no illegality or infirmity in the order of the District Forum, since till date petitioner has not complied with this order. It is apparent from the conduct of the petitioner, that he has no intention to comply with the order of the District Forum. Petitioner has been dragging respondent no.1/complainants, from one fora to the other fora, just by filing meritless and bogus petitions on one ground or the other. Petitioner by these efforts, to a large extent, has succeeded in frustrating the execution of the award, passed by the District Forum. Petitioner is making all efforts to deprive the complainants fruits of the decree.

9. IN *Ravinder Kaur Vs. Ashok Kumar & Anr.*, AIR 2004 SC 904, Apex Court observed : "Courts of law should be careful enough to see through such diabolical plans of the judgment debtor to deny the decree holders the fruits of the decree obtained by them. These type of errors on the part of the judicial

forum only encourage frivolous and cantankerous litigations causing law s delay and bringing bad name to the judicial system."

10. IT is well settled that no leniency should be shown to such type of litigants who in order to cover up their own fault and negligence, goes on filing meritless petitions in different foras. Equity demands that such unscrupulous litigants whose only aim and object is to deprive the opposite party of the fruits of the decree must be dealt with heavy hands. Now question arises for consideration is as to what should be the quantum of costs which should be imposed upon the petitioner for dragging the complainant upto this fora when petitioner had no case at all. It is not that every order passed by the judicial foras is to be challenged by the litigants even if the same are based on sound reasonings.

Apex Court in Ramrameshwari Devi and Ors. Vs. Nirmala Devi and Ors., Civil Appeal Nos.4912-4913 of 2011 decided on July 4, 2011 has observed : "45. We are clearly of the view that unless we ensure that wrong doers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court s otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases. 46. Usually the court should be cautious and extremely careful while granting ex-parte ad interim injunctions. The better course for the court is to give a short notice and in some cases even dasti notice, hear both the parties and then pass suitable biparte orders. Experience reveals that ex-parte interim injunction orders in some cases can create havoc and getting them vacated or modified in our existing judicial system is a nightmare. Therefore, as a rule, the court should grant interim injunction or stay order only after hearing the defendants or the respondents and in case the court has to grant ex-parte injunction in exceptional cases then while granting injunction it must record in the order that if the suit is eventually dismissed, the plaintiff or the petitioner will have to pay full restitution, actual or realistic costs and mesne profits. 47. If an ex-parte injunction order is granted, then in that case an endeavour should be made to dispose of the application for injunction as expeditiously as may be possible, preferably as soon as the defendant appears in the court. 48. It is also a matter of common experience that once an ad interim injunction is granted, the plaintiff or the petitioner would make all efforts to ensure that injunction continues indefinitely. The other appropriate order can be to limit the life of the ex-parte injunction or stay order for a week or so because in such cases the usual tendency of unnecessarily prolonging the matters by the plaintiffs or the petitioners after obtaining ex-parte injunction orders or stay orders may not find encouragement. We have to dispel the common impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit. It is also a matter of common experience that to achieve clandestine objects, false pleas are often

taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs. In *Swaran Singh Vs. State of Punjab* (2000) 5 SCC 668 this court was constrained to observe that perjury has become a way of life in our courts. 49. It is a typical example how a litigation proceeds and continues and in the end there is a profit for the wrongdoers. 50. Learned Amicus articulated common man's general impression about litigation in following words : "Make any false averment, conceal any fact, raise any plea, produce any false document, deny any genuine document, it will successfully stall the litigation, and in any case, delay the matter endlessly. The other party will be coerced into a settlement which will be profitable for me and the probability of the court ordering prosecution for perjury is less than that of meeting with an accident while crossing the road."

11. IN our opinion, present petitions are nothing but a gross abuse of process of law and same are totally, frivolous and bogus one just to deprive the complainants the fruits of decree. As such, same are required to be dismissed with costs. Accordingly, we dismiss the present petitions with costs of Rs.10,000/- each. Petitioner is directed to deposit the costs of Rs.10,000/- in each petitions (totaling Rs.90,000/- in above nine petitions) by way of demand draft in the name of "Consumer Legal Aid Account" of this Commission, within eight weeks from today.

12. IT also transpires from the record that State Commission has dismissed the appeals of the petitioner with costs of Rs.10,000/- to be deposited in Haryana State Legal Service Authority, Chandigarh. In case, petitioner has not deposited the costs as imposed by the State Commission, then petitioner shall also deposit those costs, as directed, within eight weeks. In case, petitioner fails to deposit the aforesaid costs, within the prescribed period, then he shall also be liable to pay interest @ 9% p.a., till realization. Pending application also stands disposed of.

13. LIST for compliance on 27.7.2012.